

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter, of the Appeal of }
DELTA MANUFACTURING COMPANY }

Appearances:

For Appellant: O. D. Brown, President of Appellant
Corporation
For Respondent: Chas. J. McColgan, Franchise Tax Commission;

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Ch. 13 Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of the Delta Manufacturing Company to a proposed assessment of additional tax in the amount of \$23.11 based upon its return for the year ended December 31, 1933.

The only question involved in this appeal is whether the Commissioner acted properly in disallowing as a deduction from gross income for the year 1933, the sum of \$2,744.41, representing debts which Appellant claims were ascertained to be worthless and charged off during the year. The Commissioner contends that the debts were ascertained to be worthless in prior years and should have been deducted in such prior years rather than in the year 1933.

It appears that all the debts in question were acquired in 1929. Shortly thereafter, two of the debtors went through bankruptcy; another debtor disappeared and was reported dead; a fourth debtor, the one owing the largest amount of all, promised in 1931 to make payment if successful in obtaining recovery on certain contracts then being litigated. Notwithstanding these facts, Appellant did not charge off the debts as worthless until 1933, when actions to collect the same were barred by the statute of limitations.

In support of its claim that the debts were not ascertained to be worthless until 1933, Appellant states that it had hopes of collecting the debts until 1933. The Commissioner points out however, that Appellant's income for the years prior to 1933 was such that charging off of the debts in such prior years would not in any way reduce its tax liability. Thus, it is at least possible that although the Appellant considered the debts worthless prior to 1933, it delayed writing them off until it was able to use the debts to reduce the amount of taxes which it would otherwise be required to pay.

Under the circumstances, we are of the opinion that we would not be justified in reversing the Commissioner. We fully appreciate that a taxpayer's representations are to the time when

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debts are considered worthless are entitled to the greatest of respect. On the other hand, we cannot lightly substitute our judgment for the judgment of the Commissioner.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDEREE, ADJUDGED AND DECREED, that the action of Charles J. **McColgan**, Franchise Tax Commissioner, in overruling the protest of Delta Manufacturing Company, a corporation, against a **proposed** assessment of an additional tax in the amount of \$23.11, based upon its return for the year ended December 31, 1933 pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 25th day of October, 1935, by the State Board of Equalization.

R. E. Collins, Chairman
John C. Corbett, Member
Fred E. **Stewart**, Member
Orfa Jean Shontz, Member
Ray L. Riley, Member

ATTEST: Dixwell L. Pierce, **Secretary**